

Rules Review Committee Minutes

Three hundred forty-sixth meeting Tuesday December 16, 2014 Room 414 State Capitol Pierre, South Dakota

The three hundred forty-sixth meeting of the Rules Review Committee was called to order by Representative Timothy Johns (Chair) at 9:03 a.m. CST, on December 16, 2014, in Room 414 at the State Capitol, Pierre, South Dakota, and via the Digital Dakota Network (DDN) at the following locations: Department of Human Services, 2361 Dakota Ave. S., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; and the University Center, 4801 N. Career Ave., Room FADM 145, Sioux Falls, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Jim Bradford and Representatives Peggy Gibson, Anne Hajek, and Timothy Johns (Chair). Member excused: Senator Jean Hunhoff. Senator Mike Vehle (Vice Chair) was present following the roll call. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at http://legis.sd.gov under "Interim."

Approval of Minutes

Representative Gibson moved, seconded by Representative Hajek, that the minutes of the November 12, 2014, meeting be approved. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Bradford, Gibson, Hajek, and Johns. Members excused: Hunhoff and Vehle.

Rules Reviewed

Department of Education: Board of Education – Amend rules to create consistent language between teacher and principal evaluation rules in regard to the summative effectiveness rating; and establish a process by which principals must be evaluated by the 2016-2017 school year.

Ms. Tami Darnall and Ms. Abby Javurek-Humrg reviewed the proposed rules.

Rules Review Committee December 16, 2014 Page 2 of 7

Representative Gibson moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Education: Board of Education is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Agriculture: Division of Agricultural Services – Amend rules to maintain interstate shipment of milk and milk products as determined by FDA Milk Safety Branch and update references.

Mr. Scott Schelske reviewed the proposed rules.

Representative Hajek moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Agriculture: Division of Agricultural Services is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Corrections – Amend a rule to give Tribal Parole Agents, hired pursuant to the tribal parole project, the authority to detain parolees for the purpose of preventing escape and enforcing discipline on parolees.

Mr. Pat Pardy reviewed the proposed rule.

Representative Johns moved, seconded by Representative Gibson, that the review of the rule proposed by the Department of Corrections is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Corrections: Board of Pardons and Paroles – Amend rules to align rule content with recent statutory changes regarding attendance at parole hearings, victim notice, procedures for parole with insufficient evidence of program directive compliance, parole to other jurisdictions and indeterminate sentences; establish a process for an expedited pardon application for minor offenses; and clarify that the Parole Board can impose an inmate's suspended sentence for institutional rule violations and/or for failing to participate in required programming.

Mr. Pardy reviewed the proposed rules.

Representative Hajek moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Corrections: Board of Pardons and Paroles is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Game, Fish and Parks – Amend rules that would modify the "diver-down flag requirements" by changing flag size requirements and restricting diver-down flags from being placed in areas that would restrict watercraft navigation; adjust the nonrefundable application fee for elk, mountain goat, and bighorn sheep from \$5 to \$10; prohibit baiting

Rules Review Committee December 16, 2014 Page 3 of 7

from March 15 through May 31, inclusive, and create an exception for research activities conducted by the Department; offer residents 85 less one-tag "male turkey" licenses and 340 less two-tag" male turkey" licenses for the Prairie Units; offer nonresidents 10 more one-tag "male turkey" licenses and 28 less two-tag "male turkey" licenses for the Prairie Units; correct unit boundary descriptions for BST-BH1 (Black Hills) and PST-53A (Perkins County); remove the archery restriction west of Interstate 29 in Brookings County; remove the split seasons in Clay and Union counties; add Lincoln County to the restricted area where a person may use only a shotgun using shot shells, muzzleloading shotgun, or bow and arrow; reduce the number of archery turkey access permits valid for Good Earth State Park from 10 to 5, and repeal Unit PST-ZZ1; modify the definition of "Inland waters"; add a definition for "snag hook" and modify the definition of "snagging" accordingly; allow the use of artificial lights for fishing, and allow for the liberalized take of silver carp and bighead carp that jump into a boat or that can be netted using a dip net; change the channel catfish daily and possession limits on Nebraska border waters; correct the county references for Hanson Lake and Curlew Lake; clarify the manner in which paddlefish taken below Gavin's Point Dam are to be measured for purposes of the established length restriction; modify the rules pertaining to areas open to the spearing of game fish; prohibit the harvest of mussels for noncommercial purposes; require listing all wild animal (including amphibians, reptiles, and invertebrates, and parts thereof) specimen collection requests on applications for scientific collector's permits; add all wild animals (including amphibians, reptiles, and invertebrates, and parts thereof) to the list of specimens for which limits on the number of specimens and special conditions and provisions can be established.

Mr. Tony Leif reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Hajek, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Game, Fish and Parks – Amend a rule to authorize statewide spearing of game fish, open boundary waters to seasons that match adjoining states spearing laws, make the season the same as hook and line, open January 1 and end the last day of December, and allow the taking of all species of fish except those that are protected.

Mr. Leif stated that the Game, Fish and Parks Commission did not adopt the proposed rule regarding spearing, thus no committee action was necessary.

Department of Revenue: Division of Property and Special Taxes – Amend rules to clarify the requirements for the renewal of certified appraiser assessor certificates, revise the requirements for maintaining the professional designation of a "Certified Appraiser Assessor," update the requirements for testing and retesting courses at annual assessor schools, and update manuals and price of manuals to the current version that must be used by assessors in calculating the value of non-residential and residential property.

Mr. Michael Houdyshell reviewed the proposed rules.

Rules Review Committee December 16, 2014 Page 4 of 7

Representative Gibson moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Revenue: Division of Property and Special Taxes is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Environment and Natural Resources: Water Management Board -Amend Surface Water Quality rules to update legal and technical references; add, modify, and delete definitions; set site-specific total suspended solids criteria for the Cheyenne River and water temperature criteria for streams in the Black Hills Trout Management Area; and update toxic pollutant criteria to be consistent with U.S. Environmental Protection Agency criteria to include establishing a standard for methylmercury at 0.3 mg/kg in fish flesh; reformat a chapter to a single table to reduce the number of pages and words; add Lake Alexander in Pennington County, an unnamed lake west of Bristol in Day County, and Antelope and Indian Springs Lakes in Clark County; correct typographical errors; assign immersion recreation use to the North Fork Grand River and a segment of the South Fork Grand River; update the segment breaks to reflect current highway designations for American Crow Creek in Lyman County, Hidewood and North Deer Creeks in Deuel County, and Bear Butte Creek in Meade County; remove the seasonal coldwater marginal fish life propagation use from Fall River in Fall River County and extend the warmwater permanent fish life propagation use for Fall River from the Cheyenne River to its confluence with Cold and Hot Brook Creeks; change the coldwater marginal fish life propagation use to warmwater permanent fish life propagation for both Cold and Hot Brook Creeks in Fall River County; remove the immersion recreation use from a segment of Spring Creek in Pennington County; and add the immersion recreation use to sections of the North Fork and South Fork Grand River in Perkins and Harding Counties.

Mr. Patrick Snyder reviewed the proposed rules twice due to DDN technical difficulties. It was noted that two rules regarding site-specific criteria for the Cheyenne River had been removed from these proposed rule changes.

Representative Hajek moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Environment and Natural Resources: Water Management Board is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Health: State Board of Dentistry – Amend rules to allow a dental hygienist, advanced dental assistant or dental assistant that holds a permit to monitor patients under general anesthesia and deep sedation or moderate sedation to inject medication through an intravenous site while under personal supervision of a dentist that holds a permit to administer general anesthesia and deep sedation or moderate sedation and to update sedation and anesthesia rules to require that any dentist that administers moderate sedation or provides dental services to patients under moderate sedation ensure that the office in which the work is performed has pulse oximetry and electrocardiogram display and require that any dentist that administers general anesthesia and deep sedation or provides dental services to patients under general anesthesia and deep sedation ensure that the office in

Rules Review Committee December 16, 2014 Page 5 of 7

which the work is performed has pulse oximetry, electrocardiogram display, precordial stethoscope and measurement of EtCO2 (capnography).

Dr. Roger Wilson, Rapid City, President, and **Ms. Brittany Novotny**, Pierre, Executive Secretary, State Board of Dentistry, reviewed the proposed rules. It was noted that the proposed changes to ARSD 20:43:08:10 and 20:43:08:11 regarding the delegation of duties had been withdrawn.

Representative Johns moved, seconded by Representative Hajek, that the review of the rules proposed by the Department of Health: State Board of Dentistry is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Social Services: Division of Child Support – Amend rules to update certain terminology to reflect current language and practice.

Ms. Teresa Schulte reviewed the proposed rules.

Representative Hajek moved, seconded by Senator Bradford, that the review of the rules proposed by the Department of Social Services: Division of Child Support is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Labor and Regulation: Board of Accountancy – Amend rules to update continuing professional education criteria to include the word count formula and update references.

Ms. Nicole Kasin, Sioux Falls, Executive Director, Board of Accountancy, reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Labor and Regulation: Board of Accountancy is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Health: Division of Health and Medical Services – Amend rules to add severe combined immunodeficiency disorder (SCID) to the mandated newborn screening panel and ensure NBS specimens will not be used for any purpose other than for newborn screening for which that they were collected and remove language conflicting with current protocols and standard operating procedures for the services of a centralized designated contract laboratory for newborn screening.

Ms. Colleen Winter reviewed the proposed rules. She noted that the proposed change that would have added severe combined immunodeficiency disorder (SCID) to the panel had been withdrawn.

Rules Review Committee December 16, 2014 Page 6 of 7

Senator Bradford moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Health: Division of Health and Medical Services is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Health: Division of Health Systems Development and Regulation – Amend a rule to provide additional optional services for assisted living centers to assist residents dependent on dining assistance and to allow to provide assistance to complete activities of daily living up to total assist and to turn and raise in bed and to transfer.

Mr. Tom Martinec reviewed the proposed rule.

Public Testimony

Mr. Mark Deak, Sioux Falls, South Dakota Healthcare Association, spoke in support of the proposed rule change.

Senator Bradford moved, seconded by Representative Hajek, that the review of the rule proposed by the Department of Health: Division of Health Systems Development and Regulation is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Health: Board of Chiropractic Examiners – Amend rules to update requirements for individuals not immediately seeking licensure after graduation; modify requirements for activating an inactive or lapsed chiropractic license; establish a rule for activating a lapsed chiropractic radiographic and chiropractic assistant certificate; modify continuing education requirements for chiropractic radiographic and chiropractic assistant certifications; and update reference material for peer review process.

Ms. Marcia Walter, Yankton, Executive Director, and **Mr. Craig Kennedy**, Yankton, Legal Counsel, reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Health: Board of Chiropractic Examiners is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Department of Health: Board of Examiners in Optometry – Amend rules to increase the annual renewal fee; add to the listing of procedures approved as within the scope of practice of optometry; and adopt rules for a complaint investigation process.

Ms. Naomi Cromwell, Pierre, Legal Counsel, Board of Examiners in Optometry, reviewed the proposed rules.

Rules Review Committee December 16, 2014 Page 7 of 7

Representative Gibson moved, seconded by Representative Hajek, that the review of the rules proposed by the Department of Health: Board of Examiners in Optometry is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Adjournment

Representative Gibson moved, seconded by Representative Hajek, that the meeting be adjourned. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hajek, Johns, and Vehle. Member excused: Hunhoff.

Chair Johns adjourned the meeting at 12:10 p.m.